

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	:	
On Its Own Motion	:	
	:	
Determination under Section 16-112(m)	:	06-0801
of the Public Utilities Act as to Termination	:	
of the Neutral Fact Finder	:	
Process	:	

**ORDER**

By the Commission:

The Commission has received a Staff Report (the "Staff Report") dated December 8, 2006, from the Financial Analysis Division in which it is recommended that the Commission terminate the neutral fact-finder process created under Section 16-112 of the Public Utilities Act ("Act" or "PUA").

The "market value" of electric power and energy, which is determined under Section 16-112 of the Act, is used in several different contexts in Article XVI of the Act, including as a component in the definition of transition charges in Section 16-102. Transition charges terminate at the end of 2006 under Section 16-108(f). Other statutory uses of "market value" are set forth in Sections 16-103(c), 16-110, and 16-111(i) of the Act.

Under Section 16-103(c), the market value as provided in Section 16-112 is one of two possible means of determining "market based prices" for the electric power and energy component of the price that an electric utility may charge a residential or small commercial customer for bundled electric service, once the provision of electric power and energy has been declared competitive for those customers. The Staff Report notes that as of December 2006, the provision of electric power and energy has not been declared competitive for the residential or small commercial customers of any Illinois electric utility.

Under several subsections of Section 16-110, the market value of electric power and energy determined under Section 16-112 is used in calculating the tariffed price of power and energy offered to nonresidential customers under the so-called "delivery services customer power purchase options." Section 16-110(c) creates one of two power purchase options that survive the end of the "transition charge period." It reads in part as follows:

After the transition charge period applicable to a non-residential delivery services customer, and until the provision of electric power and energy is declared competitive for the customer group to which

the customer belongs, a non-residential delivery services customer that paid any transition charges it was legally obligated to pay to an electric utility shall be permitted to purchase electric power and energy from the electric utility for contract periods of one year at a price or prices equal to the sum of (i) the market value determined for that customer's class pursuant to Section 16-112 and (ii) to the extent it is not included in such market value, a fee to compensate the electric utility for the service of arranging the supply or purchase of such electric power and energy.

[220 ILCS 5/16-110(c)]

The Staff Report notes that all Illinois electric utilities that have ever implemented transition charges have in place a tariffed mechanism for the determination of market value pursuant to Section 16-112. Staff states that it is unaware of Section 16-110(c) having been read to apply to an electric utility that never implemented transition charges.

Section 16-111(i) also requires Commission consideration of the market value determined under Section 16-112. It applies to proceedings to establish rates for tariffed services offered by an electric utility subsequent to 2006, and states in part as follows:

In determining the justness and reasonableness of the electric power and energy component of an electric utility's rates for tariffed services subsequent to the mandatory transition period and prior to the time that the provision of such electric power and energy is declared competitive, the Commission shall consider the extent to which the electric utility's tariffed rates for such component for each customer class exceed the market value determined pursuant to Section 16-112 [220 ILCS 5/16-112], and, if the electric power and energy component of such tariffed rate exceeds the market value by more than 10% for any customer class, may establish such electric power and energy component at a rate equal to the market value plus 10%.

[220 ILCS 5/16-111(i)]

This language appears to oblige the Commission to consider the extent to which the electric utility's tariffed rates for electric power and energy for each customer class exceed the market value determined pursuant to Section 16-112 in any proceeding to set tariffed rates for power and energy. Since any electric utility is permitted to seek rate relief after January 1, 2007, there remains the potential for a need for the determination of market value "pursuant to Section 16-112," in order to permit the Commission to make the statutorily required comparison.

Section 16-112(a) creates the mechanism by which market value is determined. It provides in part as follows:

The market value to be used in the calculation of transition charges as defined in Section 16-102 shall be determined in accordance

with either (i) a tariff that has been filed by the electric utility with the Commission pursuant to Article IX of this Act and that provides for a determination of the market value for electric power and energy as a function of an exchange traded or other market traded index, options or futures contract or contracts applicable to the market in which the utility sells, and the customers in its service area buy, electric power and energy, or (ii) in the event no such tariff has been placed into effect for the electric utility, or in the event such tariff does not establish market values for each of the years specified in the neutral fact-finder process described in subsections (b) through (h) of this Section, a tariff incorporating the market values resulting from the neutral fact-finder process set forth in subsections (b) through (h) of this Section.

[220 ILCS 5/16-112(a)]

Section 16-112(b), which concerns the appointment of the neutral fact-finder, reads in part thus:

Except as provided in subsection (m) of this Section, on or before April 30, 1998, on or before February 28, 1999, and on or before each April 30 from 2000 until 2007, the Commission shall appoint a neutral fact-finder to make the calculations described in subsection (c) of this Section. The neutral fact-finder shall be a member of a national public accounting firm, shall not have served as the neutral fact-finder in the previous year, and shall be selected from a list of candidates provided by a nationally recognized provider of neutral fact-finders that has established rules for maintaining confidentiality. An amount sufficient to pay the fees of the neutral fact-finder shall be appropriated annually from the Public Utility Fund in the State treasury.

[220 ILCS 5/16-112(b)]

Section 16-112(m) provides the exception to the requirement that the Commission appoint a neutral fact-finder:

The Commission may approve or reject, or propose modifications to, any tariff providing for the determination of market value that has been proposed by an electric utility pursuant to subsection (a) of this Section, but shall not have the power to otherwise order the electric utility to implement a modified tariff or to place into effect any tariff for the determination of market value other than one incorporating the neutral fact-finder procedure set forth in this Section. *Provided, however, that if each electric utility serving at least 300,000 customers has placed into effect a tariff that provides for a determination of market value as a function of an exchange traded or other market traded index, options or futures contract or contracts, then the Commission can require any other electric utilities to file such a tariff, and can terminate the neutral fact-finder procedure for the periods covered by such tariffs.*

[220 ILCS 5/16-112(m); emphasis supplied]

The Staff Report outlines the history and nature of the NFF process in Illinois, including the Commission's appointment of a neutral fact-finder in calendar years, 1998, 1999, and 2000, and the Commission's subsequent suspension of the NFF process pursuant to Section 16-112(m) of the Act in subsequent years up to and including 2006, by action in Docket Nos. 01-0053 and 03-0007.

In terms of the Commission's authority to terminate the procedure under Section 16-112(m) of the Act, the Staff Report notes that there are currently three electric utilities serving 300,000 or more customers in Illinois: Commonwealth Edison Company ("ComEd"), Illinois Power Company ("AmerenIP"), and Central Illinois Public Service Company ("AmerenCIPS").

The Commission considered ComEd tariffs establishing the Illinois Auction in Docket No. 05-0159. In the Order entered January 24, 2006, in that proceeding, it stated that "given the structure of wholesale electric markets, the Commission is convinced that the auction process approved herein is consistent with the requirements of Section 16-112(a) of the Act." Order in Docket No. 05-0159, page 225.

The Commission, in Docket Nos. 05-0160, 05-0161, and 05-0162 (Consolidated), considered tariffs of AmerenCILCO, AmerenCIPS, and AmerenIP establishing the same Illinois Auction. Rider MV for Central Illinois Light Company ("AmerenCILCO"), AmerenCIPS, and AmerenIP, as approved with modifications in that case, fits within Section 16-112 of the Act, as noted on 1<sup>st</sup> Revised Sheet No. 27.008 of each of these electric utilities' Rider MV: "Market Value or MV is being used consistent with the provisions of Section 16-112 and Section 16-111(i) of [Article XVI of the Public Utilities Act]."

The Staff Report states that as of December 2006, there are four other electric utilities in Illinois. MidAmerican Energy Company ("MEC") serves some 84,000 retail customers within its service area. It has not taken steps toward the declaration of its services as competitive under PUA Section 16-113, so there is no current need for a market value for purposes of PUA Section 16-103(c). It has not implemented transition charges or offered a delivery services customer power purchase option, and Staff states that it is not aware of any obligation that it offer such an option under PUA Section 16-110(c) after January 2, 2007. MEC is not currently seeking rate relief under Section 16-111(i).

According to the Staff Report, Interstate Power and Light Company ("IPL") serves some 12,000 retail customers, and South Beloit Water Gas & Electric Company ("SBWG&E") serves some 9,000 customers, within their respective service areas. Both are subsidiaries of Alliant Energy Corporation, and, as with MEC, Staff is not aware of a current need for a Section 16-112 market value for either of these companies under PUA Section 16-103(c), 16-110(c), or 16-111(i). Staff also notes without further comment that each is currently the petitioner in a

Commission proceeding in which they seek permission to exit the retail electric utility business in Illinois (see Docket Nos. 05-0835 and 05-0836).

The Staff Report states that Mt. Carmel Public Utility Company serves some 5,000 Illinois retail electric customers, and that as with MEC, IPL, and SBWG&E, Staff is not aware of a current need for a Section 16-112 market value for this electric utility.

Because each electric utility serving at least 300,000 customers has placed into effect a tariff that establishes market value through a mechanism other than the neutral fact-finder process, and because every current Illinois electric utility that has ever implemented transition charges has in place a similar tariff, Staff states that there is no current need for a market value for any of the other Illinois electric utilities. The lack of need for a neutral fact-finder is further bolstered by Staff's assertion that since the enactment of Article XVI of the PUA, new market structures have come into place that offer representative prices for capacity and energy in wholesale electricity markets. Examples of these cited by Staff include the energy prices generated by the markets operated by regional transmission organizations (PJM Interconnection, L.L.C. ("PJM") and the Midwest Independent Transmission System Operator, Inc.) and the capacity auctions administered by PJM.

The Staff Report recommends that the Commission enter an order that determines that the neutral fact-finder process is terminated until further action of the Commission. At the same time, Staff recommends that the Commission note the possibility that Section 16-112 market values may be required in the future under the provisions of PUA Article XVI cited above. We are also advised to put all Illinois electric utilities on notice that any electric utility that is determined to be subject to Section 16-103(c), Section 16-110(c), or 16-111(i) will be required to have in place a tariff that provides for or incorporates a market value that meets the requirements of Section 16-112.

We accept Staff's recommendations.

The Commission, having reviewed the record in this proceeding, which consists of the Staff Report, and being fully advised in the premises, is of the opinion and finds as follows:

- (1) that it has jurisdiction over the subject matter of this proceeding and the parties hereto;
- (2) the recitals set forth in the prefatory portion of this order are hereby adopted as findings of fact;
- (3) the Staff Report should be made a part of the record of this proceeding;
- (4) the neutral fact-finder procedure should be terminated until further action of the Commission;

(5) the Commission should and does note the possibility that Section 16-112 market values may be required in the future under the provisions of PUA Article XVI including Section 16-103(c), 16-110(c), and Section 16-111(i); and

(6) Illinois electric utilities should be placed on notice that any electric utility that is determined to be subject to Section 16-103(c), Section 16-110(c), or 16-111(i) will be required to have in place a tariff that provides for or incorporates a market value that meets the requirements of Section 16-112.

IT IS THEREFORE ORDERED that. the neutral fact-finder procedure is terminated until further action of the Commission.

IT IS FURTHER ORDERED that the Staff Report should be made a part of the record of this proceeding.

IT IS FURTHER ORDERED, that all Illinois electric utilities are put on notice that any electric utility that is determined to be subject to Section 16-103(c), Section 16-110(c), or 16-111(i) will be required to have in place a tariff that provides for or incorporates a market value that meets the requirements of Section 16-112.

IT IS FURTHER ORDERED that a copy of this Order be served on the designated agent of each electric utility in Illinois and each Illinois certified alternative retail electric supplier.

IT IS FURTHER ORDERED that subject to Section 10-110 of the Public Utilities Act, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 20th day of December, 2006.

(SIGNED) CHARLES E. BOX

Chairman